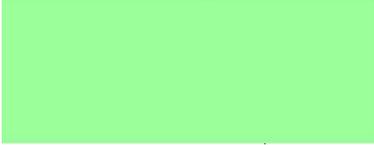




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE:

JAN 31 2013

OFFICE: TEXAS SERVICE CENTER FILE:



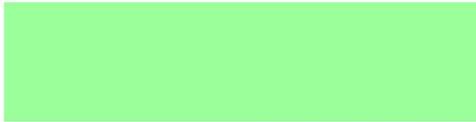
IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a gas station/convenience store. It seeks to permanently employ the beneficiary in the United States as a manager. The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concludes that the petitioner failed to establish that it is the successor-in-interest to the prior owner and failed to demonstrate the continuing ability to pay the proffered wage.

The appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

On November 29, 2012, the AAO issued a Notice of Derogatory Information and Request for Evidence (NDI/RFE), informing the petitioner, [REDACTED] that according to the online corporate records of the state of New York, [REDACTED] was dissolved on January 27, 2010.<sup>2</sup> The petitioner submitted a response with some additional documentation, but pertinent to the AAO's NDI/RFE, confirmed that the petitioning corporation was dissolved.<sup>3</sup> If the petitioning business is no longer an active business, the petition and its appeal have become moot. The instant appeal is therefore moot.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

<sup>2</sup> The AAO also enumerated several deficiencies and discrepancies contained in the record relevant to the *bona fide* nature of the job offer, the beneficiary's claimed work experience and relationship to the petitioner and prior employer, and the petitioner's continuing ability to pay the beneficiary's proffered wage from the priority date onward.

<sup>3</sup> Although the "Statement of Facts" offered by the petitioner's representative claims that the petitioning corporation was dissolved on June 11, 2012, as stated above, the online corporation records of the state of New York indicate otherwise.

**ORDER:** The appeal is dismissed as moot.